

# GOA STATE INFORMATION COMMISSION AT PANAJI

**CORAM:** Shri. M. S. Keny, State Chief Information Commissioner

Appeal No. 3/SCIC/2011

Mrs. Daliza Silveira,  
H. No. 2, Near the Church,  
Corlim, Ilhas - Goa

.... Appellant

V/s.

1) Public Information Officer,  
Mamlatdar of Ponda Taluka,  
Ponda - Goa

.... Respondent No. 1.

2) First Appellate Authority,  
Deputy Collector & SDO.,  
Ponda Sub Division,  
Ponda - Goa

.... Respondent No. 2.

Appellant in person.

Shri S. H. Naik, representative of Respondent No. 1 and 2.

## **J U D G M E N T** **(24.08.2011)**

1. The Appellant, Smt. Daliza Silveira, has filed the present Appeal praying that Public information Officer/Mamlatdar of Ponda be again directed to furnish the information asked and that penalty be imposed for not providing the information within specified time.

2. The brief facts leading to the present Appeal are as under:-

That the Appellant, vide her application dated 13.08.2010, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer (PIO)/Respondent No. 1. That the Head Clerk of the PIO/Mamlatdar of Ponda informed that reply is sent by post but till date nothing has been received. That being not satisfied the Appellant preferred an Appeal before the First Appellate Authority (FAA)/Respondent No. 2. By Order dated 09.12.2010 the FAA directed the PIO to furnish the relevant information within a period of 15 days from the date of the Order. However till date the PIO did not furnish the information. Being aggrieved the Appellant has filed this Appeal praying the abovementioned reliefs.

3. The case of the Respondent No. 1 is fully set out in the reply which is on record. In short, it is the case of the Respondent No. 1 that he received the application seeking information with regard to the property document of mutation file No. 13041. That since file was not traceable and efforts were going on to trace out the said file the Appellant was not intimated. The Respondent No. 1 admits of the Appeal filed before FAA and also about order passed. That in pursuance of the order copy of Form No. IX was kept ready in the office but the same was not collected. It is the case of the Respondent No. 1 that as soon as application was received concerned Talathi for mutation was directed to furnish the information, however, the said Talathi vide her reply dated 02.07.2010 stated that file No. 13041 could not be traced till date. That there was no malafide intention on the part of his office not to give information to the Appellant but it is due to non-availability of file in hand, information could not be provided to the Appellant. That every hard efforts were made after passing of the order by the Dy. Collector to trace the file but inspite of the same file is not traced till today. According to the Respondent No. 1, from computer records the information that can be given is the copy of Form No. IX and that Mutation was carried out on the basis of Deed of Succession dated 29.04.2004 drawn in the book No. 682 in the office of the Civil Registrar-cum-Sub-Registrar and Notary Ex-Officio, Panaji-Goa. In short, according to the Respondent No. 1 the information could not be furnished to the Appellant and there was no deliberate intention on the part of his office not to furnish information.

4. Reply of the Appellant dated 16.05.2011 filed on 16.06.2011 is in on record. According to the Appellant part information i.e. Form No. 9(IX) was provided to her only on 04.05.2011 after 9 months. The appellant denies about information being kept ready. In short, the appellant denies the contents of the reply.

5. It is seen that in pursuance of the notice the PIO/Respondent No.1 did not appear, however, his representative Shri S. H. Naik appeared.

6. Heard the Appellant and perused the records.

It is seen that the Application seeking information is dated 13.08.2010. As per the application the information sought is about Mutation file No. 13041 and the period to which mutation relates is 01.01.2004 to 31.09.2005. What is asked is property documents of mutation file No. 13041 and copy of Form No. IX. It appears that the same was not furnished and on 08.10.2010 the Appellant preferred appeal before FAA. The FAA passed the order on 09.12.2010 thereby directing the Mamlatdar to furnish the relevant information within a period of 15 days. Since information was not furnished the Appellant landed in this Commission.

According to the Respondent No. 1 the said file is not traceable. Appellant submits that part information Form No. IX was furnished only on 04.05.2011 after 9 months.

7. The file appears to be of recent origin, however, the same is not traceable. If the contention that information cannot be furnished as the same is not traceable is accepted, then it would be impossible to implement R.T.I. Act. However, it is also a fact that information that is not available cannot be furnished. No doubt records are to be well maintained. Besides, office of Respondent No. 1 is the custodian of Public Records.

I have perused some of the rulings of the Central Information Commission on the point. The rule of law now crystallized by these rulings is that information/document that is not available cannot be furnished. The Right to Information Act can be invoked only for access to permissible information.

In any case Mamlatdar, as Head of the concerned Department, should hold inquiry, fix responsibility about missing of the file and initiate action including lodging of F.I.R.

8. Now it is to be seen whether there is any delay.

According to the Appellant he was not informed and part of the information was furnished only on 04.05.2011 after 9 months. According to the PIO information was kept but not collected. In any case the PIO/Respondent No. 1 should be given an opportunity to explain the same.

9. In view of the above, I pass the following Order:-

**ORDER**

Appeal is partly allowed. Issue notice under section 20(1) of the Right to Information Act, 2005 to Respondent No. 1/PIO to show cause why penalty action should not be taken against him for causing delay in furnishing information. The explanation, if any, should reach the Commission on or before 13.10.2011. PIO/Respondent No. 1 shall appear for hearing.

Further inquiry posted on 13.10.2011 at 10:30a.m.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 24<sup>th</sup> day of August, 2011.

Sd/-  
(M. S. Keny)  
State Chief Information Commissioner





